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OFFICE OF PETITIONS

In re Application of	:	
Gattis, et al.	:	
Application No. 10/825,715	:	ON PETITION
Filed: April 16, 2004	:	
Attorney Docket No. 4029.001	:	
For: TRAINING PAD APPARATUS	:	

This is a decision on the petition under 37 CFR 1.181, filed June 5, 2006, to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to submit a reply to the September 29, 2005 non-final Office action, which set a three month extendable period for reply. No extensions of time or reply being received, the Office contended that this application became abandoned on December 30, 2005. A Notice of Abandonment was mailed on April 5, 2006.

Petitioners allege that the September 29, 2005 non-final Office action was not received at the correspondence address of record.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioners have submitted a copy of the docket record where the requirement would have been entered had the September 29, 2005 non-final Office action been received. In addition, practitioner referenced the record in the petition and stated that a review of the application's file for the September 29, 2005 non-final Office action was fruitless. It is noted that practitioner Katy Fain has stated on the record that at the time the September 29, 2005 non-final Office action was mailed, she was the sole practitioner located at the correspondence address of record. Ms. Fain has stated on the record that Ms. Mays, the attorney of record, left the firm in July of 2005 and that no mail was being forwarded to Ms. Mays around the time the September 29, 2005 non-final Office action was mailed.

Petitioners have established non-receipt. The petition is **granted**, the Notice of Abandonment is vacated, and the holding of abandonment is withdrawn.

It is noted that an assignee is attempting to change the power of attorney and correspondence of record. Unfortunately, the assignee has not enclosed a 3.73(b) statement with the June 5, 2006 requests. Therefore, the requests are denied. Please submit a 3.73(b) statement promptly.

Because the Mays and Fain, LLP address is not operational, this decision is being mailed to the address listed on the petition. However, there have been no changes to the correspondence address of record or the empowered attorney of record in Office records.

Since Ms. Fain has responded to the September 29, 2005 non-final Office action, there is no need to re-mail the Office action. After the mailing of this decision, the application will be returned to Technology Center AU 3764 for consideration of the amendment filed on June 5, 2006.

Telephone inquiries may be directed to the undersigned at (571) 272-3230.



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Office of Petitions